IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 31ST JULY 2007 / 9TH SRAVANA 1929

Bail Appl..No. 4615 of 2007()

CRIME NO.401/07 OF CHENGAMANAD POLICE STATION

PETITIONER :

INDIRA K.P, AGED 50,
W/O.SHYAMARAJ,THYKKOOTTATHIL HOUSE,
KRISHNA NIVAS,CHENGAMANAD,
NOW RESIDING AT THE RESIDENCE OF V.T.JOY,
VEZHAPPILLY HOUSE,EDATHALA NORTH,ALUVA-4.

BY ADV. SRI.V.M.SAJAN
SRI.JAISON JOSEPH

RESPONDENTS:

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1. STATE OF KERALA REPRESENTED BY
PUBLIC PROSECUTOR,HIGH COURT OF KERALA,
ERNAKULAM.

2. SUB INSPECTOR OF POLICE,
CHENGAMANAD POLICE STATION.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE.

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON 31/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. NO. 4615 OF 2007

Dated this the 31st day of July, 2007

ORDER

Application for anticipatory bail. The petitioner – a woman, faces allegations, inter alia, under Sec.420 of the IPC. She had availed a loan from the Bank in 1996. She had offered her property as security to the Bank. The loan has not been discharged yet. While the loan liability was in existence and the charge allegedly continued, the petitioner is alleged to have transferred her rights in the property to the transferees by a settlement deed. The transferees are closely related to the petitioner. Such transferees have further transferred the property also, it is urged.

2. The Bank has filed a complaint in 2007 before the learned Magistrate raising the grievance that the Bank has been cheated. The complaint has been forwarded to police for investigation. A crime has been registered. Investigation is

pending. The petitioner apprehends imminent arrest.

3. The learned counsel for the petitioner submits that by no stretch of imagination can it be held that the petitioner is guilty of the offence of cheating against the Bank. The security given to the Bank continues to be in force. The Bank's remedy to proceed against the property offered as security continues. In these circumstances, how and in what manner can it be said that the Bank has been cheated, he queries.

4. The learned Public Prosecutor was requested to explain. The only submission of learned Public Prosecutor is that the liability has not been discharged yet. The transfer documents do not refer to the anterior charge in favour of the Bank. From these, it is contended that Bank has been cheated. For the laity this may be called cheating; but the ingredients of the offence of cheating in criminal law are certainly not there. In these circumstances, I am of opinion that the petitioner's prayer for anticipatory bail deserves to be considered favourably.

5. In the result, this petition is allowed. Following directions are issued under Sec.438 of the Cr.P.C:

(i) The petitioner shall appear before the learned Magistrate having jurisdiction at 11 a.m. on 7/8/07. She shall be released on regular bail on her executing a bond for Rs.25,000/-

with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

(ii) The petitioner shall make herself available for interrogation before the Investigating Officer between 10 a.m. and 1 p.m. on 8/8/07 and thereafter as and when directed by the Investigating Officer in writing to do so.

(iii) If the petitioner does not appear before the learned Magistrate as directed in clause (i), directions issued above shall thereafter stand revoked and the police shall be at liberty to arrest the petitioner and deal with her in accordance with law as if those directions were not issued at all;

(iv) If the petitioner were arrested prior to her surrender on 7/8/07 as directed in clause (i) above, she shall be released on her executing a bond for Rs.25,000/- without any sureties undertaking to appear before the learned Magistrate on 7/8/07.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge